IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 86 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

RAJENDRA DYEING & PRINTING MILLS LTD.

Appearance:

MR BB NAIK for MR MANISH R BHATT for Petitioner No. 1

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this Court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A', under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether the Tribunal has not erred in law in deciding that the Commissioner of Income-tax cannot exercise his power u/s 263 when the Income-tax Officer has framed the assessment u/s 143(3) read with sec. 144B after referring the case to the IAC?"

2. Learned advocate Shri B.B. Naik has appeared for the revenue whereas nobody has appeared for the assessee though the official Liquidator has been served with the notice of this court on behalf of the assessee company which has been ordered to be wound up.

3. A similar legal question had been referred to this court in I.T.R. No. 120/86 which has been decided on 9th July 2001. Looking to the law laid down by this court in the said judgment, we are of the view that it was open to the Commissioner of Income-tax to exercise his power under sec. 263 of the Act when the Assessing Officer had framed assessment under sec. 143(3) read with sec. 144B of the Act or in other words the Commissioner of Income-tax could have exercised his powers u/s 263 of the Act when the Assessing Officer had framed the assessment u/s 143(3) rad with sec. 144B of the Act.

4. In view of the law laid down by this court in I.T.R. No. 120/86 as well as in the case of Torson Products Ltd. v. CIT, 173 ITR 611, we answer the question referred to us in the affirmative i.e. in favour of the revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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